Southern California Gas Company *and* Utility Workers Union of America, AFL–CIO, Local 132. Case 31–CA–20587

June 21, 1996

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND FOX

On January 23, 1996, Administrative Law Judge Timothy D. Nelson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed answering briefs. The General Counsel and the Charging Party also filed cross-exceptions and supporting briefs, to which the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs, and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order[2] as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Southern California Gas Company, Glendale, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraphs 2(a) and (b).

''(a) Within 14 days after service by the Region, post at its bases and facilities in Southern California, copies of the attached notice marked ''Appendix.''[31] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

''(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.''

Alice J. Garfield, Esq., for the General Counsel.
David. B. Reeves, Esq., of Los Angeles, California, for the Respondent, Southern California Gas Co.
Jay D. Roth and *Ira L. Gottlieb, Esqs. (Taylor, Roth, Bush & Geffner)*, of Los Angeles, California, for the Charging Party, Utility Workers Local 132.

DECISION

STATEMENT OF THE CASE

TIMOTHY D. NELSON, Administrative Law Judge. I heard this case in trial in Los Angeles, California, on December 20, 1994.[1] It emerged from a charge, filed on May 18 by Utility Workers Union of America, AFL–CIO, Local 132 (Local 132) against Southern California Gas Company (the Respondent). It became a formal prosecution on June 8, when the Regional Director for Region 31 of the National Labor Relations Board (the Board), acting in the name of the Board's General Counsel, issued a complaint and notice of hearing against the Respondent.

The complaint alleges that the Respondent violated Section 8(a)(1) of the National Labor Relations Act[2] (the Act) when it ''prevented'' its ''employees'' (specifically, workers who were stewards of Local 132) from getting other employees (specifically, employees at work bases where the stewards were not assigned to work) to sign ''petitions . . . regarding issues affecting the employees' interests as employees'' (specifically, petitions opposing a proposed settlement of certain shareholders' derivative lawsuits filed against the Respondent's corporate parent, Pacific Enterprises). The complaint further alleges that by the same preventive actions the Respondent unilaterally changed an established term or condition of employment in the bargaining unit, in violation of Section 8(a)(5) of the Act.[3]

The Respondent admits that the Board's jurisdiction is properly invoked,[4] and that Local 132 is a labor organization

[1] In adopting the judge's finding that the employee-union stewards were entitled to access to the Respondent's parking lots as ''employees'' under *Republic Aviation v. NLRB*, 324 U.S. 793 (1945), we rely particularly on *Postal Service*, 318 NLRB 466 (1995).

[2] We agree with the General Counsel that the Respondent is precluded from reviving its contractual waiver defense to the 8(a)(1) access allegation. Thus, the Respondent expressly notified the judge and the parties in its posthearing brief that it was withdrawing this defense. Although the Respondent further stated that it ''reserv[ed] the right to develop this defense in subsequent proceedings, if necessary,'' we find that it did not thereby even purport to preserve a right to renew the defense to the Board in this proceeding.

[3] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[1] All dates below are in 1994 unless I say otherwise.

[2] Sec. 8(a)(1) bans employer behavior that ''interfere[s] with, restrain[s], or coerce[s] employees in the exercise of the rights guaranteed in Section 7.'' Sec. 7 declares pertinently that

> [e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining *or other mutual aid or protection*[.]

(My italics, emphasizing the clause which is implicated by this case.)

[3] In pertinent part, Sec. 8(a)(5) makes it unlawful for an employer ''to refuse to bargain collectively with the representatives of his employees.''

[4] In its answer to the complaint, the Respondent admits, and I find, that a copy of Local 132's May 18 charge was served on the Respondent on May 19, and that it is an employer engaged in com-

Continued

within the meaning of Section 2(5) of the Act. The Respondent denies that its actions violated Section 8(a)(1) or constituted an unlawful unilateral change under Section 8(a)(5). As to the alleged 8(a)(1) violation, the Respondent now raises two, alternative defenses.[5] First, it maintains that the petitioning was not protected by Section 7—and therefore the Respondent was free under the Act to ban it—because the petitioning was not aimed at advancing the interests of the bargaining unit employees qua employees, but rather, the interests of some of them as shareholders of Pacific Enterprises. In the alternative, assuming that the petitioning was for a Section 7 protected purpose, the Respondent maintains that it still could lawfully bar the stewards from petitioning among employees at locations other than the stewards' assigned work sites—for the same reason and to the same extent it is permitted in law to bar ''nonemployee union representatives'' from at-will access to its premises.

I have studied the whole record, the parties' briefs,[6] and the authorities they rely on. Based on more detailed findings and analyses below, I judge that the Respondent unlawfully interfered with employees' rights under Section 7's ''mutual aid or protection'' clause when it barred the petitioning by visiting stewards. However, I judge that the complaint lacks merit insofar as it alleges under Section 8(a)(5) that the Respondent's actions constituted an unlawful unilateral change in the bargaining unit employees' established terms or conditions of employment.

merce within the meaning of Sec. 2(6) and (7) of the Act. Related to the latter conclusion of law, the Respondent further admits as fact, and I find, as follows: The Respondent is a California corporation, headquartered in Glendale, California, and is engaged in generating and distributing natural gas. Its gross revenues each year exceed $500,000, and each year it buys and gets more than $50,000 worth of goods or services directly from suppliers outside California.

[5] At the trial, the Respondent also raised a third, waiver-by-contract defense to the 8(a)(1) counts in the complaint, emphasizing in this regard the language of sec. 3.04 of the governing labor agreement, infra, which generally limits the scope and nature of permitted ''visitations'' to company workplaces by ''union representatives,'' including by limiting the content of any ''discussions'' by such representatives with employees ''to particular problems arising under this agreement.'' But on brief, the Respondent expressly ''withdr[e]w'' that defense, based on its ''belie[f] that this defense is not supported by law.'' Id. at 2, fn. 1, citing *NLRB v. Magnavox Co.*, 415 U.S. 322 (1974), and *Universal Fuels*, 298 NLRB 254 (1990). Where the Respondent has withdrawn its waiver-by-contract defense to the 8(a)(1) counts, I will give no consideration to the possible merits or demerits of that defense; however, consistent with arguments made elsewhere on brief by the Respondent, I will consider the language of and practices under sec. 3.04 in my analysis of the Respondent's defenses to the 8(a)(5) unilateral change count in the complaint.

[6] Counsel for the General Counsel and counsel for the Respondent filed timely briefs on or before the deadline of January 31, 1995. On February 1, 1995, counsel for Local 132 filed a brief and a separate motion to accept its late-filed brief, both of which were delivered to my office on February 2, 1995. In substance, Local 132's counsel represented that his office timely mailed copies of his brief to the opposing parties on January 30, 1995, but that, due to clerical inadvertence, the copy of his brief intended to be mailed to me that day was misaddressed and misdelivered instead to the United States Court of Appeals for the Ninth Circuit in San Francisco. On this uncontradicted showing of simple mistake, timely discovered and corrected, and absent objection by any other party, I grant Local 132's motion to accept its late-filed brief, and I have considered its contents.

FINDINGS OF FACT[7]

I. OVERVIEW

Local 132 was one of many plaintiffs who filed shareholders' derivative lawsuits in 1992 against the Respondent's parent corporation, Pacific Enterprises. Local 132 plays a central role in representing thousands of the Respondent's employees, and a substantial majority of those represented workers, by virtue of their participation in the Respondent's Retirement Savings Plan, own stock in Pacific Enterprises. In February, seeking to block a proposed settlement of the derivative lawsuits, Local 132 sent its stewards to the Respondent's various operational bases to solicit employees during nonworktimes in nonwork areas to sign petitions opposing the proposed settlement. Although the stewards were themselves employees of the Respondent, they were on temporary leaves of absence to perform union business when they made their petitioning visitations, and they were being paid by Local 132 for their efforts. When it became aware of this activity, the Respondent admittedly prevented the stewards from petitioning at bases other than the ones where they were themselves assigned to work, and the Respondent threatened disciplinary action against the stewards and suspension of certain union ''privileges'' under the labor agreement if they persisted in their petitioning visitations to other bases.

II. BACKGROUND

A. *The Respondent's Operations; the Collective-Bargaining Relationship*

The Respondent is a California public utility corporation; it generates and sells natural gas to millions of customers in southern California. Its main business headquarters are in Glendale, but it maintains about 50 ''base'' facilities in cities throughout southern California, and most of the employees in the bargaining unit described below are assigned to work at or from one of these base locations. The Respondent is wholly owned by another corporation, Pacific Enterprises (PE), whose acquisitions and eventual divestitures of certain nonutilities businesses in the mid-1980s eventually led to the shareholders' derivative lawsuits.

Since at least June 1991, Local 132's International parent union, Utility Workers Union of America, AFL–CIO (UWUA), and another labor organization, International Chemical Workers of America, AFL–CIO (ICWA), have been the exclusive, joint collective-bargaining representatives for roughly 6000 of the Respondent's employees working in various job classifications set forth in a labor agreement those unions reached with the Respondent in June 1991.[8] Local 132's precise role within this joint representational ar-

[7] The facts are not significantly in dispute. Except where I note otherwise, my findings are based on a stipulation of the parties or on documentary exhibits or on undisputed and credible testimony.

[8] The 1991 labor agreement, although due under its terms to expire in March 1993, was extended by the parties, and its provisions still governed their relationship and the terms and conditions of employment of the unit employees at all times that concern us.

rangement is uncertain on this record, although it appears that it operates at least as UWUA's agent for contract administration and grievance-handling purposes, and perhaps so functions on behalf of ICWA, as well.[9]

B. *The Retirement Savings Plan*

For at least 30 years, the Respondent has maintained a Retirement Savings Plan covering employees within and without the bargaining unit. The plan is the subject of a Retirement Savings Plan Agreement negotiated between the Respondent and UWUA and ICWA, which recites in its opening article that its ''provisions . . . shall apply to all employees who are covered by [the 1991 labor agreement] between the parties hereto, or by said Agreement as it may be subsequently modified, or by any superseding agreement.''

Under the plan, employees with 1 year of service may contribute portions of their wages each pay period into one or more of five trust funds administered by the Respondent as tax-deferred retirement income funds under Section 401(k) of the Internal Revenue Code. One of the funds available under the Retirement Plan, called the ''PE Stock Fund,'' is devoted solely to investing in the common stock of the Respondent's parent corporation, PE.[10] The Respondent makes counterpart contributions to any funds designated by a participating employee, but it makes all such contributions in the form of PE stock. As of January 1994, approximately 70 percent of the employees in the bargaining unit were participating in the Retirement Plan, and the parties stipulated that, ''[b]y virtue of their participation . . . these employees were holders of PE stock.''[11]

C. *The 1992 Shareholders' Derivative Suits; the 1994 Settlement*

In February 1992, certain shareholders of PE filed a derivative lawsuit in the Superior Court of California, Los Angeles County, against PE's board of directors and certain individuals currently or formerly serving as its directors.[12] In May 1992, certain other shareholders filed a class action lawsuit in the United States District Court for the Central District of California, an action that eventually became styled, *In re Pacific Enterprises Securities Litigation*. Apparently, the Federal lawsuit involved claims that PE or its agents had violated Federal securities laws, but also included shareholders derivative claims identical to those in the state suit, against the same defendants named in the state suit.[13]

In June 1992, Local 132 and 2 individual plaintiffs (all 3 of whom claimed to ''represent over 5,000 employees of [the Respondent], the vast majority of whom are [PE] shareholders by virtue of [the Respondent's] Retirement Savings Plan'') filed their own, ''piggyback'' derivative suit (the Local 132 suit) in Los Angeles County Superior Court, naming the same defendants as those named in the separate state-court action filed by other shareholder-plaintiffs in February. The Local 132 suit was eventually consolidated with the original state suit. One of the coplaintiffs in the Local 132 suit was Sam Karl Weinstein, who, apart from being a former employee of the Respondent and a PE shareholder, was also currently employed by UWUA, Local 132's parent, as its Regional Director for Region 5. The Local 132 complaint summarily alleged, and the record independently shows, that in 1989 Weinstein had unsuccessfully sought a seat on PE's board of directors as an ''opposition'' candidate, and had conducted a proxy campaign in which he received major backing from an organization called ''Shareholders Action Committee,'' whose business address was the same as Local 132's,[14] and which I treat in all the circumstances as a Local 132 front group.[15]

On January 26, PE announced that agreement had been reached to settle both the Federal and the state derivative suits. At roughly the same time, attorneys for some of the plaintiffs and all the defendants in those suits submitted to the Federal court a proposed settlement stipulation, contemplating a settlement of both the Federal and state court actions insofar as they involved shareholders' derivative claims. On February 11, Weinstein filed in the Federal court a nine-page document (not counting extensive attachments) labeled, ''Objections of Sam Weinstein to Settlement of De-

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[9] In this latter regard, the parties stipulated that Local 132's president, Dale J. Viot, at material times ''head[ed] . . . the joint [UWUA/ICWA] steering committee, which means he represent[ed] the entire group of represented employees for bargaining purposes.''

[10] The plan also permits employees to invest in a Guaranteed Interest (contracts) Fund, a Diversified (stock portfolio) Fund, a Balanced (stock and bond combination) Fund, and a Money Market (short-term instruments) Fund.

[11] I assume that the parties' stipulation to this conclusion is grounded in the fact that even employee participants who do not elect to contribute to the PE Stock Fund would be ''holders of PE stock'' in the sense of being the beneficial owners of the PE stock which the Respondent itself contributes as its counterpart share to any of the investment funds designated by the employees.

[12] Although PE itself is styled a ''Nominal Defendant'' in the state court action, the complaint in that case recites that PE is thus named ''solely in a derivative capacity'' (R. Exh. 1, p. 17, par. 19), and elsewhere, it recites that the action is ''brought for and in the name of [PE] against [PE's] Board of Directors and certain of its present and former directors.'' Id. at 1, par. 1.

[13] The parties stipulated that the Federal court lawsuit was filed ''against PE,'' and that it alleged, ''[i]n essence . . . that by misrepresenting its financial position, PE had misled the members of the class into purchasing its stock.'' Without wishing to contradict the parties' stipulation, I think the summary recital in the stipulation deserves clarification in the light of the following: The record contains no pleading or document in the Federal action which identifies the specific defendants; however, it contains a pleading (R. Exh. 2) setting forth a proposed settlement of that action which avers, inter alia, that there are certain ''Individual Defendants'' in the Federal suit (id. at 4), and that the Federal action ''alleges all of the claims set forth in the State [shareholder's derivative] complaint . . . in addition to federal securities claims.'' Id. at 3. Because it appears that both the state and Federal suits shared common, shareholder-derivative claims, I infer that if PE was a defendant in the Federal suit, it was, again, only a ''nominal defendant'' as to those derivative claims, and that one aim of the Federal lawsuit, like the state lawsuit, was to recoup losses allegedly suffered by PE's corporate treasury as a consequence of the complained of actions of PE's directors.

[14] See, e.g., p. 1 of the attachment to R. Exh. 3.

[15] The complaint in the Local 132 suit averred (G.C. Exh. 10, at p. 11) that the 1989 proxy campaign on Weinstein's behalf was one led by the ''Plaintiffs'' themselves, necessarily suggesting that the campaign was a Local 132 action. Moreover, as I elaborate elsewhere, Local 132 stewards visited the Respondent's work bases in furtherance of Weinstein's 1989 candidacy, where they solicited proxies from bargaining unit employees who were PE shareholders—which conduct the General Counsel equates with a ''campaign'' by ''the Union'' (i.e., Local 132) itself. G.C. Br. at 8.

rivative Claims.'' In this pleading Weinstein argued, in substance, that the Federal court should abstain from considering the proposed settlement while identical claims were still pending in the state court, or, alternatively, that the Federal court should reject the settlement because the proposed damage-recovery amount of $4 million was way too low, considering that the damage to PE's treasury was ''conservative[ly]'' around ''$1 billion,'' and because the plaintiffs' attorneys fees allowed in the proposed settlement ($8 million) were way too high, indeed twice the amount to be restored to PE's treasury.

As I amplify below, in early February, Local 132 mobilized its stewards to solicit bargaining unit employees at the Respondent's various bases to join in Weinstein's objections, a campaign which the Respondent admittedly sought to thwart, and a campaign which Local 132 dropped after the deadline for filing objections with the Federal court expired in late February.

D. *Relevant Contract Provisions and Historical Practices Concerning Access to the Respondent's Bases by Union Representatives, Including Local 132 Stewards*

Section 3.04 of the governing labor agreement, captioned ''Union Activity,'' contains these pertinent provisions, some of which I have emphasized in italics:

> The Company will not discriminate against any employee for engaging in Union activity. Union activity shall not take place on the job in such a way that it interferes with the work. However, *the Company will permit access to company property by union representatives to expedite the handling of grievances, to contact members of the Union, or to visit union bulletin boards, under the following circumstances:*
>
> When more than one employee is to be contacted, such visitations shall normally be limited to the lunch period or immediately prior to the beginning of or after the end of a shift. When only one employee is to be contacted, or when a grievance investigation is involved, or when a Union Bulletin Board is to be visited, such visitations may be made at any convenient time during working hours. The Union representatives shall request permission in advance from the manager of labor relations or division manager and shall limit his visitation to a reasonable length of time.
>
> Where practicable the supervisor will provide an appropriate place for the Union representative to confer with the employee or employees. *It is understood and agreed that such discussions will be limited to particular problems arising under this agreement and will exclude discussion of general union administrative procedures. It is further agreed that such visitations will not be used for purposes of organizing employees, recruiting new members, or collecting dues.*

The parties have developed a set of procedures and practices for implementing ''visitation'' rights under section 3.04: In practice, the Respondent will allow union representatives, including stewards of Local 132, access to any of its facilities where bargaining unit employees work so long as Local 132 completes and submits in advance a standard form (visitation form) addressed to Joyce Rowland, the Respondent's manager of labor relations, listing the names of such intended visitors, the dates, and locations of their intended visits, and the ''Reason'' for such visits. Typically, Local 132 will write ''Union administrative work'' or similar words in the ''Reason'' space on the visitation form, and sometimes Local 132 will neglect to complete the ''Reason'' space entirely. Nevertheless, historically, the Respondent had granted access to union representatives, including to Local 132 stewards, whenever Local 132 had submitted such a form, even when no ''Reason'' was entered on it.

Local 132's steward-petition drive in February was not the first time Local 132 had used its stewards to make visitations to the Respondent's bases to try to get the support of bargaining unit employees on issues of arguably common concern.[16] When stewards are to be used by Local 132 for such visitations, another part of the labor agreement, section 3.08, requires Local 132 to clear the stewards for a ''Union Leave of Absence'' from their regular work with the Respondent.[17] Stewards in such ''Union Leave'' status draw no pay from the Respondent, but are typically paid by Local 132 for their union services,[18] and were so paid by Local 132 when they conducted their February petition drive.[19]

III. THE ALLEGED UNFAIR LABOR PRACTICES

When Sam Weinstein filed his objections in Federal court to the proposed settlement, Local 132 organized a campaign to get bargaining unit employees who were PE shareholders to sign petitions or similar forms, to be sent to the Federal court, in which the signers declared their agreement with and ''joinder'' in Weinstein's objections. Local 132 used its stewards as the spearheads in this campaign. Thus, following established procedures described above to obtain union leaves of absence for its stewards, and then submitting the standard visitation forms announcing their intended visits, Local 132 sent the stewards to various bases in southern California other than their regular worksites as employees of the Respondent, where, in nonwork areas and during nonwork times, the visiting stewards tried to get other bargaining unit employees to sign the petitions. And in reaction, as the parties stipulated, the Respondent's agents ''prevented'' this activity at 12 different base locations on 13 different occasions between February 8 and 24. Moreover, the Respondent made no bones about its intention to ''prevent'' any such further visitations by the stewards; thus, on February 22,

[16] To support the prosecution claim under Sec. 8(a)(5) that the Respondent's 1994 interference with the stewards' petitioning activities constituted an unlawful unilateral change, the General Counsel sought to prove the existence of a past practice among the parties wherein steward visitations for purposes analogous to those involved in the February 1994 petitioning were knowingly tolerated by the Respondent. I will make supplemental findings concerning these historical steward-visitation instances, and the extent of the Respondent's knowledge of their nature, in my analysis of the 8(a)(5) count.

[17] Under sec. 3.08, bargaining unit employees of the Respondent who are ''selected by the Union to do work for the Union in the territory served by the Company . . . shall upon written request of the Union be authorized to absent themselves [without pay] from their employment with the Company.''

[18] Testimony of Steward Stefan Faber at Tr. 96:13–14, and 115:2–4.

[19] Testimony of Steward Helen Olague at Tr. 71:3–6.

Company Labor Relations Manager Rowland wrote to Local 132 President Viot (addressing Viot in his capacity as ''Chair, Joint Steering Committee''), saying in pertinent part as follows:

> Union representatives have been propagandizing, on Company property, their position regarding the settlement of litigation involving Pacific Enterprises and thus have been violating the provisions of Section 3.04 of the Collective Bargaining Agreement. This provision, by virtue of the National Labor Relations Act, continues to govern the conditions under which the Union may conduct business on Company property.
>
> . . . .
>
> The Union, of course, has every right to communicate to its members whatever position it may wish to take on any issue, including any litigation, and you have many ways to do so without violating Section 3.04. However, the language of Section 3.04 specifically limits the use of Company property and Company time to discussion of ''particular problems arising under this Agreement.'' Thus, there can be no question about the Union's contravention of that language by its recent conduct.
>
> We expect the Union to live up to its legal commitments and we request that the Union immediately desist from such conduct in the future. Failure to do so will lead to disciplinary action where feasible and appropriate and potential suspension of Union privileges under Sections 3.04, 3.08 (b) and/or 3.10.[20]

Viot replied in writing to Rowland some 5 weeks later, on March 28. He stated that although the petition drive was ''no longer a live issue, now that the deadline for filing objections has passed,'' he still wanted to ''make it clear that [Rowland's] view that the conduct of our organizers [sic] was improper is totally unfounded.'' He characterized Rowland's threats of discipline as ''plain violations of the Act [and of] Section 3.04.'' He also warned in the closing paragraph that the ''particular problem'' occasioning the recent petition drive ''is quite likely the most important problem to have ever afflicted [sic] our members[,]'' that the problem was ''not solved yet,'' and finally, that, ''we may very well call again in the future on our members to record their opinions on this issue—at their workplace.''

IV. ANALYSES; SUPPLEMENTAL FINDINGS, CONCLUSIONS OF LAW

A. *Alleged 8(a)(1) Violation*

1. Introduction; general legal setting

Under established interpretations of Section 7's ''mutual aid or protection'' clause, employees have a general statutory right (absent ''special circumstances'') to use their workplace as a forum for circulating petitions or distributing literature among their fellow workers, so long as they do it in nonwork areas and during nonwork times (*Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945)), and so long as the subject of their activity can fairly be said to ''bear a relationship to their interests as employees.'' *Eastex, Inc. v. NLRB*, 437 U.S. 556, 567 (1978).

By contrast, ''nonemployee union representatives'' seeking to advance the interests of employees enjoy no right grounded in the Act to enter or use an employer's property for such purposes, except in relatively rare cases where it can be demonstrated that there exist no adequate, alternative ways for the union to communicate with the employees. *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956); and *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992). We are instructed by *Hudgens v. NLRB*, 424 U.S. 507 (1976), that there is a ''reason . . . of substance'' for treating employees differently from nonemployee union representatives for these purposes, namely, that ''employees [are] already rightfully on the employer's property,'' and therefore, only the ''employer's management interests rather than his property interests [are] involved,'' whereas nonemployees have no such preexisting status as ''invitees,'' and, therefore, the employer's property interests are most directly implicated when a nonemployee union representative claims a statutory right of access to the property. Supra, 424 U.S. at 521–522. Accordingly, an employer who maintains and enforces in a nondiscriminatory way a nondiscriminatory policy banning ''outsiders'' from access will not normally commit an 8(a)(1) violation when it enforces that policy as to nonemployee union agents. Id.

The General Counsel's prosecution as an 8(a)(1) violation of the Respondent's admitted attempts to bar stewards from petitioning at bases where they were not assigned to work relies on three premises, two of which are essentially factual, and are not seriously in contest. Thus, the General Counsel emphasizes, and the Respondent concedes, that the petitioning contacts the Respondent sought to prevent were between stewards—themselves ''employees''[21]—and their fellow employees, and that these contacts were made or sought to be made in nonwork areas during nonwork times. However, in the first of its defenses, the Respondent strongly disputes the validity of the third premise underlying the 8(a)(1) prosecution—that the subject of the petitioning was ''related to employees' interests as employees.'' For reasons I discuss next, I find no merit to this defense.

2. The Respondent's first defense

The Respondent argues that the petitioning had nothing to do with advancing the interests of putative petition signers as employees of the Respondent, because the petitioning was aimed at persuading a Federal court to reject an allegedly inadequate settlement of shareholders' derivative suits brought for the benefit of PE's treasury and the stockholders who owned that treasury. The Respondent further argues that even if the petitioning were successful in persuading the Federal court to reject the proposed settlement of the shareholders' suits, this would not affect the wages, hours of work, or

[20] The material provisions of secs. 3.04 and 3.08 have been quoted previously. Sec. 3.10 deals with the subject of ''Union Bulletin Boards,'' including the limitations on their use and the content of the materials that may be posted on them.

[21] The Respondent concedes on brief (Br. 11, fn. 6) that the stewards were technically ''employees'' within the admittedly broad contemplation of Sec. 2(3) of the Act, but as part of its second line of defense, infra, it insists that when the stewards made their petitioning visits to other work bases in February, they were not visiting in their capacity as employees, but were functioning simply as paid union representatives on an organizing mission.

other terms and conditions of its employees' employment, but only the value of their shareholders' interest in PE, an interest which is not unique to their employment, but which they share in common with many nonemployee shareholders who likewise have a financial stake in PE's future. And in support of the distinction at the heart of its first defense, the Respondent cites *Ford Motor Co.*, 221 NLRB 663 (1975), where the Board held that the distribution of a ''purely political'' newsletter was beyond the bounds of activity envisioned by the mutual aid or protection clause.[22]

It is hardly unreasonable for the Respondent to characterize the ''interest'' being served by Local 132's petition drive as the employees' ''shareholder interest'' in the outcome of the derivative lawsuits; after all, the employees targeted by the drive were so targeted precisely because they were PE shareholders. But such a characterization of the employees' interest, even if itself reasonable, does not logically preclude the alternative characterization proposed by the General Counsel—that the employees also had an ''interest as employees'' of the Respondent in the outcome of that lawsuit. Indeed, in an analogous context, the *Eastex* Court made a quite similar point. Thus, rejecting the employer's argument that a union's distribution of literature among employees was aimed merely at ''political'' goals (opposing Texas right-to-work legislation and protesting the President's veto of an increase in the Federal minimum wage), the Court cautioned that,

> As almost every issue can be viewed by some as political, the clear purpose of the ''mutual aid or protection'' clause would be frustrated if the mere characterization of conduct or speech removed it from the protection of the Act. . . . Moreover, what may be viewed as political in one context can be viewed quite differently in another. [437 U.S. 570 fn. 20.]

Here, with the Court's admonition in mind, I conclude that even though the employee interest nominally being served by the petition campaign may properly be characterized as a ''shareholder interest,'' the petition campaign may also be properly viewed as serving an interest that the employees had as employees of the Respondent—an interest in the health and integrity, and, above all, the value of their retirement plan.[23] Thus, in substantial agreement with the General Counsel, I judge that when employees whose collectively negotiated wages and benefits include the right to participate in a retirement plan under which they necessarily will become PE shareholders, and whose payout value to the employees on retirement will thus necessarily depend on the value of PE stock, those employees have not merely a ''shareholder's interest'' in the outcome of a lawsuit affecting the value of PE's corporate treasury (and in turn, the value of its stock), but a very real stake as employees of the Respondent in the value of their retirement benefit plan.

Moreover, contrary to the Respondent, I do not find the ''relationship'' between the employees' interest in the proposed lawsuit settlement and the value of their retirement plan to be ''so attenuated that [it] cannot fairly be deemed to come within the 'mutual aid and protection' clause.'' *Eastex*, supra, 437 U.S. at 567–568; see also, e.g., *Harrah's Lake Tahoe Resort*, 307 NLRB 187 (1992).[24] It may be, as the Respondent argues on brief (Br. 8, fn. 4), that ''the proposed settlement would have added [only] six cents per share of stock to the corporate treasury.'' However, this fact strikes me as irrelevant to the question whether or not the petitioning was sufficiently ''related'' to the employee ''interest'' sought to be served to be protected by Section 7. For one thing, it is precisely because the proposed settlement would have added only a relatively small amount to PE's treasury that the petition drive to block the settlement was undertaken in the first instance, with the aim of restoring even more substantial amounts to PE's treasury, to make up for the asserted loss of ''$1 billion'' allegedly suffered due to corporate mismanagement and gross negligence. More fundamentally, even if, by some expert analysis, the success of the petition drive could not have been expected to significantly improve the value to the Respondent's employees of their retirement plan, this analysis could not reasonably be used to deprive employees of their right to act in concert for what they believed was necessary or useful for their mutual aid and protection as em-

[22] The General Counsel has somewhat misleadingly represented the holding of *Ford Motor* as follows (Br. 12; my emphasis): ''newsletter dealing with union's acquiescence to forced overtime and *purely political matters held protected*.'' It is true that the administrative law judge, affirmed by the Board, found that the distribution of the ''September 13'' newsletter was protected—despite the fact that the newsletter dealt ''with political matters to some extent,'' because it also dealt in part with a forced overtime issue that was ''certainly within the purview of Section 7.'' 221 NLRB at 666. However, the Board also affirmed the judge's finding that the distribution of the ''November 4'' newsletter, which the judge characterized as ''purely a political tract,'' was activity that ''does not relate to employees' problems and concerns qua employees,'' and therefore was ''not . . . protected.'' Id. at 266. However, as the Supreme Court later noted in *Eastex*, supra, discussing *Ford Motor*, supra, and another case involving the same employer, the Board left unanswered ''whether it [the Board] considers distributions like those in the above-cited cases to be unprotected altogether, or only on the employer's premises.'' 437 U.S. at 568 fn. 18. Moreover, as I further discuss below, the *Eastex* Court warned that ''mere characterization'' of concerted conduct as ''political'' cannot remove that conduct from the protection of the Act if the conduct can also be said to bear a relationship to employees' ''interests as employees.'' And it is largely for this reason that I find that the Board's holding in *Ford Motor*, supra, provides no genuine support for the Respondent's position herein.

[23] That employees have a cognizable ''interest as employees'' in their employer's retirement or pension fund plan is beyond dispute, for it is settled that ''health and welfare and pension fund plans. . . constitute an aspect of employee wages and a term and condition of employment[,]'' and therefore, such plans are a mandatory subject for collective bargaining. *Cauthorne Trucking*, 256 NLRB 721 (1981). See also, e.g., *Exxon Research & Engineering Co.*, 317 NLRB 675 (1995).

[24] In *Harrah's*, supra, the Board found that concerted activity by employees in support of an ESOP plan was not activity for the employees' ''mutual aid or protection'' as employees because the ESOP plan was ''designed to change [their] relationship'' to that of ''entrepreneurs, owners, and managers'' of the employing entity. 307 NLRB at 182. The aim of the petitioning activity in this case is clearly distinguishable from the goal of the concerted activity in *Harrah's*, for here, although the petitioning sought to enhance the Respondents' employees' interests as ''owners'' of PE (and, in turn, to enhance the value of their retirement benefits as employees of the Respondent), it did not seek to transform employees into owners and comanagers of the Respondent. Accordingly, the result in *Harrah's* does not control the result herein.

ployees. More fundamentally still, an expert analysis showing that the employees' concerted activity would not be likely to yield any substantial improvement in their retirement payouts could not reasonably justify the conclusion that the relationship between their petitioning and their interest in the value of the retirement plan was an ''attenuated'' one. Rather, from an analytical standpoint, that relationship would remain the same, regardless of the amount of ''benefit'' the employees might realistically hope to secure by their concerted action.

In sum, contrary to the Respondent's first defense, I conclude as a matter of law that the petitioning by the employees was sufficiently ''related'' to their interests qua employees of the Respondent to render their petitioning a form of concerted activity for employees' mutual aid and protection within the intention of Section 7.

3. The Respondent's second defense

The Respondent argues alternatively that, even though the stewards were admittedly its ''employees,'' it is appropriate in these unique circumstances to treat them as ''nonemployee union representatives,'' subject to the rule of *Babcock & Wilcox*, supra, for purposes of analyzing their claim of right to visit work bases other than their own to conduct the petitioning in question. In support of this argument, the Respondent correctly notes that the visiting stewards had no official employment purpose for being at the bases where they were prevented from petitioning, indeed, that they were on leaves of absence from their regular employment with the Respondent during their petitioning visits, and were being paid by Local 132 to conduct those visitations. Thus, the Respondent argues ultimately that what distinguishes the stewards' petitioning efforts from the paradigm employee activity envisioned in such cases as *Republic Aviation*, supra, and *Eastex*, supra, is that the stewards here were not ''invitees'' to the premises that the Respondent barred them from using for petitioning purposes, but rather, were ''trespassers.'' And the Respondent further correctly notes in this regard that the prosecution has not attempted to meet the ''heavy'' burden (*Lechmere*, supra, 502 U.S. 527) of showing that Local 132 had no adequate, alternative means by which to solicit employee signatures on the petitions in question. The Respondent's arguments are not frivolous, but in my view they suffer ultimately from two, quite distinct disabilities, which I discuss next.

First, the Respondent has not made an evidentiary showing that would support the claim that the stewards were ''trespassers'' rather than ''invitees'' to the bases where they were barred from petitioning. Thus, the Respondent did not seek to prove that it maintained a general policy barring workers assigned to one base from visiting fellow workers in nonwork areas at other bases during their own and their fellows' nonworktimes. Neither did it introduce evidence that such visitations (whether conducted by mere employees or by employee-stewards) were inherently disruptive of its operations, or were otherwise in conflict with its legitimate interest in managing its workforce. On the contrary, we know affirmatively from this record that stewards enjoyed at least a ''limited invitee'' status when it came to visiting work bases other than their own, one established not just by the provisions of section 3.04 of the labor agreement, but by the Respondent's admitted historical practice of allowing such visitations so long as the visits were preannounced in a prescribed form (a form which, nevertheless, did not put the Respondent on notice of the precise purpose of any such given visitation). From all this, and additionally, from Rowland's February 22 letter to Viot, supra, I may easily find that it was not the fact of the stewards' visitations in February that aroused the Respondent to prevent such petitioning visitations, but the particular subject of their visitations, once knowledge of that subject percolated up to the Respondent's top management. In these circumstances, therefore, where the Respondent sought to bar visiting stewards from petitioning for a protected purpose, but maintained no general bar against visitations, it may be fairly said that the Respondent's interference with the petitioning was done simply ''for the purpose of interfering with and restraining employees in the exercise of their Section 7 rights.'' *Nashville Plastic Products*, 313 NLRB 462 (1993).[25]

Second, the Respondent has cited no case—and I have discovered none—where the Board has embraced the notion that an ''employee'' seeking to conduct otherwise protected, concerted activities may be treated as having only ''nonemployee'' standing when it comes to access to and use of those portions of the employer's property where the employee is not assigned or scheduled to work. Indeed, in *Nashville Plastic Products*, supra, the Board rejected the employer's attempt in the circumstances to analogize off-duty employees with nonemployee organizers ''for purposes of defining their right of access to the Respondent's property.'' Rather, the Board held that, ''if analogies are to be drawn, we find that the off-duty employees in this case . . . most closely resemble the employees in the *Le Tourneau* case [*NLRB v. Le Tourneau Co. of Georgia*, 324 U.S. 793 (1945)] whose right to distribute union literature on the outside areas of the employer's premises on their own time was upheld by the Supreme Court.'' 313 NLRB at 463. Thus, although the Respondent has suggested substantial reasons why the Board might choose to equate the rights of access of the visiting stewards in this case with the (highly limited) access rights of ''nonemployee union organizers'' as envisioned in *Babcock & Wilcox*, supra, and *Lechmere*, supra, I find no particular support in the Board's precedents for such an equation, and much in the holding of *Nashville Plastic Products*, supra, for doubting the validity of such an equation.[26] More-

[25] In the cited portion of the case, the Board found that the employer's alleged ''policy'' barring off-duty employees from being on the work premises on days when they were not scheduled to work was no defense where the alleged policy was one that had never been previously announced or disseminated before off-duty employees came to the premises to conduct protected handbilling. 313 NLRB at 462.

[26] On brief (Br. 13–15), the General Counsel claims that further ''support'' for her position can be found in the Supreme Court's remanding opinion in *Hudgens*, supra, in which she avers that the Court held that ''the Section 7 activity here was carried on by Butler's employees (albeit not employees of its shopping center store), not by outsiders.'' The General Counsel's invocation of Hudgens is misplaced. For one thing, while the General Counsel has correctly quoted from the Court's opinion (424 U.S. at 522), it is incorrect to refer to the Court's language as a ''holding,'' for, in context, the cited language merely reflected the Court's recognition that, on remand, the Board could legitimately take into account the ''employee'' status of the picketers as one of the factors to be weighed

Continued

over, although the record shows that the petitioning stewards were functioning not just as ''employee volunteers,'' but as ''paid union agents,'' this feature of the case would not appear to be influential to either the Board, which has consistently held that an employee's status as a ''paid union agent'' cannot operate to deprive or limit the employees' right to engage in Section 7 protected activity,[27] nor to the Supreme Court, which recently affirmed the Board's established position on this issue in *NLRB v. Town & Country Electric*, 116 S. Ct. 450 (1995).

Having rejected the only defenses currently advanced by the Respondent for its admitted prevention of the stewards' attempts to circulate petitions on company premises in support of what I have found to be a Section 7 protected goal, I conclude as a matter of law that by each such admitted prevention action, the Respondent violated Section 8(a)(1) of the Act.[28]

B. *Alleged 8(a)(5) Violation*

Three Local 132 agents—secretary-treasurer, Janet Jones, and stewards, Helen Olague and Stefan Faber—testified in the aggregate that Local 132's stewards made visits to the Respondent's bases on as many as four different historical occasions prior to February 1994 for purposes that the General Counsel now argues exceeded section 3.04's limiting language, i.e., for purposes other than to conduct ''discussions'' with employees ''limited to particular problems arising under [the] agreement.'' The General Counsel relies on that testimony to argue, in substance, that by February 1994, section 3.04's limiting language had become a dead letter, and had been effectively supplanted by a more tolerant practice when it came to steward visitations, a practice which, moreover, became embedded in the ''terms and conditions of employment'' of bargaining unit employees, and a practice, therefore, which the Respondent unlawfully ''changed'' unilaterally when it prevented the February petitioning by visiting stewards. In my view, the strength of this collection of evidence as proof of a pertinent, mutually accepted ''practice'' of the parties is seriously open to question on a variety of grounds, as I discuss next, with supplemental findings.

Faber, led by the General Counsel to direct his attention ''to about five years ago,'' testified—and I find—that he was paid by Local 132 in that uncertain period to visit various bases, where he met with employees before shift start and urged them ''to approve a Union dues increase.'' He further testified that on one such visit to the Santa Ana base, as the clock ticked over to 7 a.m., the shift start time, a supervisor ''came running out and screamed, 'That's it; you've got to stop.''' Asked by the General Counsel, ''Did the supervisor hear what you were discussing with them?,'' Faber testified, ''Oh, yes. We spoke very loudly . . . loud enough for everybody to hear because we were addressing the group.'' One problem with this account as evidence of a pertinent mutual ''practice'' of the parties is that the record fails to show that the parties were operating at the time of these dues-increase promotional visitations under a labor agreement that included the language of section 3.04 of the currently governing agreement. Another is the frailty of the evidence that the specific purpose of these visitations was known to company management. I recognize that the General Counsel's leading questioning eventually prompted Faber to testify with certainty that the (unnamed) ''supervisor'' at the Santa Ana base ''heard'' what was being said in Faber's meeting with the employees; but I find it difficult to square Faber's certainty on this point with his earlier testimony that the supervisor ''came running out'' (presumably, from another room or area) to end the meeting at 7 a.m. But even if this supervisor was fully aware of the nature of Faber's meeting, this would be a scant basis for claiming that the Respondent, as of February 1994, had acquiesced to a general ''practice'' of allowing steward visitations for purposes other than those prescribed by section 3.04 of the current agreement.

Jones' testimony allows me to find that during the months of January through May 1989, Local 132 sponsored a proxy campaign in favor of Sam Weinstein's candidacy for PE's board of directors. In aid of this campaign, Jones (who was then a Local 132 steward) used ''Union Administrative Work'' visits to bases other than her regular workbase to gather proxy authorizations for Weinstein from bargaining unit employees who were PE shareholders. Again, however, we do not know whether or not the parties were operating under a labor agreement in 1989 that contained limiting language like that in section 3.04 of the currently governing agreement. Moreover, the only evidence of company knowledge of the specific nature of these 1989 visits is Jones' undisputed testimony that on one such visit to the Santa Ana base, Jones had a conversation with a local supervisor about the ''merits'' of Weinstein's candidacy.

From Olague, I find that in ''mid-1991,'' Local 132 sponsored a ''Save Our Services'' campaign in aid of its protest before the California Public Utilities Commission of the Respondent's announced plan to close several branch payment offices where bargaining unit employees worked. In connection with this SOS campaign, Olague visited branch offices where she stood on the ''sidewalk'' outside, and solicited

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as part of its duty under *Babcock & Wilcox*, supra, to ''balance'' Sec. 7 interests against the shopping mall owner's property interests. And In fact, on remand, the Board only inconclusively addressed this point; noting simply that ''the employee status of the pickets here entitled them to at least as much protection as would be afforded to *nonemployee organizers* such as those in *Babcock & Wilcox*.'' *Scott Hudgens*, 230 NLRB 414, 415 (1977) (my emphasis). Inasmuch as the General Counsel elsewhere maintains that the rule of *Republic Aviation*, supra, and *Eastex*, supra, applicable to ''employee'' activity is the ''controlling'' rule here (Br. 13), and that the ''balancing'' considerations of *Babcock & Wilcox* do not even come into play because we are not faced with ''nonemployee'' access issues (id. at 14), it is apparent that neither the court's remanding dicta in *Hudgens*, nor the Board's ultimate decision on remand, provides any genuine support for the General Counsel's position.

[27] See, e.g., *Town & Country Electric*, 309 NLRB 1250 (1992), and *Sunland Construction Co*., 309 NLRB 1224 (1992).

[28] On brief, roughly consistent with par. 13 of the complaint, the General Counsel appears to seek a special finding that in one instance, the Respondent did not merely ''prevent'' the petitioning activity, but somehow compounded its violation when two supervisors allegedly ''guarded and surveilled'' Steward Olague in the course of ''preventing'' her petitioning. I regard Olague's testimony associated with this claim as a kind of cumulative surplusage—at best, as merely a particularization of ''prevention'' conduct by the Respondent's agents which I have already found to have been unlawful as a general matter. Neither would it affect the terms or scope of my recommended remedial order to address the conduct described by Olague as a distinct violation. Accordingly, I will not decide the factual or legal merits or demerits of complaint par. 13 or the General Counsel's arguments in support.

customer signatures on petitions of protest addressed to the P.U.C. She eventually testified further during redirect examinations that she also visited base locations and solicited signatures from employees, but her sketchy testimony on this point leaves it uncertain whether these base visits involved entry into the Respondent's premises. Despite this, unlike in other instances above and below, it is reasonably clear in this instance that responsible officials of the Respondent, including Rowland, were aware of these visitations and their purpose, and took no steps to prevent them.[29] I note, however, that in this particular instance, the subject of the visitations was the threatened closure of branch offices that in turn threatened the jobs of bargaining unit employees—arguably a ''problem arising under this agreement'' which was expressly permitted by section 3.04.

Finally, Olague's and Faber's testimony allows me to find as follows: In September 1993, at a time when the 1991 agreement had nominally expired but was still being observed by the parties while they negotiated over a possible replacement contract, Local 132 sent its stewards, including Olague and Faber, to various bases where they met with employees and urged them to affirm their support for a strike in aid of union contract demands, should it come to that. Again, however, Olague's and Faber's testimony contains only generalized or conclusionary suggestions that some local ''supervisors'' were aware of these meetings and their purpose, and the record does not otherwise show that the Respondent's management knowingly tolerated steward-visitations to its premises for these strike-support purposes. And again, even if this record permitted an inference of such knowing company tolerance of the 1993 strike-support visitations, it is not obvious that such activity was banned by section 3.04; indeed, it is arguable that such activity concerned a ''problem arising under this agreement'' within the intention of section 3.04.

In sum, where, at the time of the alleged unfair labor practices in 1994, the parties were operating under a labor agreement that purported to limit ''discussions'' between visiting union representatives and employees to ''problems arising under this agreement,'' and where the record contains no substantial evidence of a mutual ''practice'' of the parties that was clearly inconsistent with this contractual limitation, I judge that the General Counsel has failed to establish that the Respondent's admitted interference with the February petition drive constituted an unlawful ''change'' in the established terms and conditions of employment in the bargaining unit. Accordingly, I would dismiss the complaint insofar as it alleges that the Respondent violated Section 8(a)(5).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[30]

ORDER

The Respondent, Southern California Gas Company, Glendale, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Preventing its employees, including stewards of Utility Workers Union of America, Local 132, AFL–CIO from using visits to bases other than their regular work bases for the purpose of petitioning among their fellow employees, in nonwork areas and during nonworktimes, on subjects that relate to the employees' interests as employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at all its bases and facilities in southern California, copies of the attached notice marked ''Appendix.''[31] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[29] Questioned by counsel for the General Counsel, Rowland conceded generally that she was ''aware'' of Local 132's SOS campaign, and that she issued no instructions to managers or supervisors ''to deny employees access who wished to participate in the SOS campaign.'' In addition, Steward Olague summarily affirmed in response to the General Counsel's leading question that ''supervisors'' had ''observe[d]'' her ''while [she] participated in this SOS campaign.'' While this combination of testimony only suggests that the Respondent knowingly condoned such SOS-petitioning efforts by stewards or other employees at sites other than their own worksites, I am disposed to give greater weight to that suggestion than I might otherwise in the light of a colloquy between myself and counsel for the Respondent that developed when the General Counsel sought to query Steward Olague about details of her SOS activities. Thus, seeking to get past an argumentative impasse relating to the relevancy of the General Counsel's line of questioning, I asked the Respondent's counsel, ''Have we got an agreement by the company that they did do what the General Counsel is laboring to show here, that they permitted employees during the SOS campaign to go into company premises to circulate petitions?'' The Respondent's counsel replied, ''We're not going to dispute that.''

[30] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[31] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT prevent our employees, including stewards of Utility Workers Union of America, Local 132, AFL–CIO from using visits to our bases other than their regular work bases for the purpose of petitioning among their fellow employees, in nonwork areas and during nonworktimes, on subjects that relate to the employees' interests as employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

SOUTHERN CALIFORNIA GAS COMPANY